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C O U N S E L O R S A T L A W

September 14, 2013

Via Email (Michael_Herman@nysd.uscourts.gov)

Hon. Paul G. Gardephe
United States District Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: SEC v. Reserve, Case No.: 09-CV-04346

Dear Judge Gardephe:

We respectfully write, on behalf of defendants, to briefly respond to plaintiff SEC's letter of earlier today, in which the SEC states that: "the parties' negotiations never reached the point at which a proposal was submitted to the Commission for its consideration."

As we have previously noted, the SEC staff and defendants were negotiating the terms of a settlement for several months. These discussions were led, on our side, by my colleague, Robert Romano. Some weeks ago, the staff advised us that, because we had an "agreement in principle" they would prepare and send us a set of settlement papers, which arrived on August 30. We then discussed and preliminarily resolved several remaining drafting issues on September 3-4, and were told that the matter would be discussed further in Washington, D.C. On September 5, the staff called Mr. Romano and advised him that "the Commission" would not be settling on the terms to which we had previously agreed, nor would it settle on any other terms.

In its letter, the SEC also demands that, before the Court may consider the class settlement, it must first rule on the SEC's opposition to defendants' claims for fee and expense reimbursement from the Expense Fund. The SEC cites no authority for its position that it has standing to litigate common law contract claims that the Fund's Board of Trustees has chosen to resolve, nor do we believe there is any such authority. As noted, those claims were mediated before the Hon. Layn R. Phillips (Ret.), and then settled with the Fund's Board and the Court-appointed Lead Plaintiff and Lead Counsel, subject to Court approval as part of the class action settlement process.

At a minimum, the SEC's latest demands and ever-shifting positions reinforce the need for a conference of all interested parties at the Court's earliest availability.

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We thank the Court for its consideration.

Sincerely,

s/John Dellaportas

cc: All Counsel of Record [via email]